



0000048497

EXCEPTION ORIGINAL

12

1 William A. Mundell

Commissioner - Chairman

2 Jim Irvin

Arizona Corporation Commission

Commissioner

3 Marc Spitzer

DOCKETED

RECEIVED

4 Commissioner

MAR 06 2003

2003 MAR -6 P 3:51

Jeff Hatch-Miller

AZ CORP COMMISSION
DOCUMENT CONTROL

5 Commissioner

DOCKETED BY

Mike Gleason

6 Commissioner

CKP

BEFORE THE ARIZONA CORPORATION COMMISSION

9 IN THE MATTER OF THE FORMAL)
 COMPLAINT OF SLV PROPERTIES, L.L.C.)
 10 AGAINST ARIZONA WATER COMPANY,)
 11 AN ARIZONA CORPORATION)

DOCKET NO. W-01445A-02-0198_

EXCEPTIONS TO THE
 ADMINISTRATIVE LAW JUDGE'S
 FEBRUARY 25, 2003
 RECOMMENDATION

12
 13
 14 ARIZONA WATER COMPANY ("AWC" or the "Company") files its exceptions to the
 15 Administrative Law Judge's February 25, 2003 Recommendation in this docket. A copy of the
 16 Recommendation is attached to these Exceptions as Attachment "A" for ease of reference.

17 By way of background, this matter essentially involved a central issue: did AWC
 18 comply with its Tariff No. NP-260 (the "Tariff") as it applies to the complaint in this matter?
 19 Although the ALJ was unable to find that AWC violated the Tariff in a single instance, he
 20 nevertheless awarded substantial relief to the Complainant. Because AWC followed the Tariff in
 21 all respects, and the Recommendation does not find otherwise, and because the Tariff has the
 22 force and effect of law until the Commission has moved to change the Tariff, the
 23 Recommendation should be revised, as detailed below.

I.

LATE CHARGES AND RELATED ACCRUED TAXES SHOULD NOT BE CREDITED

26 The complaint involved two charges for maintenance of the meter that measures
 27 the delivery of CAP water to SLV's golf course. With respect to the first charge, which occurred
 28 in July 2001 the Recommendation found that "...the Complainant is liable for the maintenance

ORIGINAL

1 charge under the terms of AWC's Tariff." (Finding of Fact No. 38) Likewise, the
2 Recommendation concluded that "With respect to SLV's first maintenance charge at issue
3 herein, AWC properly charged SLV the maintenance fee allowable under the Tariff, and that
4 portion of the Complaint should be dismissed." (Conclusion of Law No. 3)

5 Notwithstanding these correct findings and conclusions that AWC complied with the
6 Tariff concerning the maintenance charge, the Recommendation orders a credit to SLV for the
7 late charges and related taxes that accrued (Conclusion of Law No. 2) while the July 2001 bill to
8 SLV remained unpaid. The reason given is that a complaint was pending before the Commission.
9 This is incorrect for several important reasons:

10 First, as noted, the Recommendation specifically concluded that AWC complied with the
11 Tariff. The Tariff, a copy of which is attached hereto as Attachment "B", specifically provides
12 for a late charge for any payment not received within fifteen days from the postmark date of the
13 bill at the rate of 1 ½% per month. There was no finding in the Recommendation that AWC did
14 not correctly apply this charge.

15 Next, there is nothing in the Commission's governing statutes or rules that preclude the
16 accrual of late charges and related taxes while a complaint is pending. It should be noted that,
17 although it was not precluded from doing so, the Company took no legal action to collect either
18 maintenance bill at issue while the Complaint was pending; now, the Company would be made a
19 victim of its own good will under the Recommendation's proposed forgiveness of late charges
20 for a past due bill which the Commission finds proper and payable.

21 Finally, it was SLV, not the Company that dragged this matter out unjustifiably. A
22 November 14, 2002 procedural order, a copy of which is attached hereto as Attachment "C",
23 details these delays. The Complaint was filed on March 18, 2002 (concerning a July 2001 bill);
24 following a pre-hearing conference in May 2002, SLV was granted a 30-day continuance for
25 time to consult with counsel as to when it would go forward with its own complaint. On July 8,
26 2002 SLV filed a request to schedule a hearing at a time that would accommodate one of its
27 principals, who was expected to return to Arizona after November 1, 2002. The hearing was
28 scheduled for November 13, 2002 then continued at SLV's request to accommodate an SLV

1 principal. The hearing finally occurred on December 3, 2002. Thus, it was SLV who stretched
2 out this matter. The Recommendation's denial of a properly assessed charge under the Tariff
3 would greatly decrease any incentive of a utility to forego collecting a bill including such
4 charges if, as a result, it is forbidden from collecting them even though its bill was found to be
5 proper.

6 The Recommendation must be revised to include the accrued late charges and related
7 taxes on both bills.

8 II.

9 SLV SHOULD ALSO BE RESPONSIBLE FOR THE SECOND MAINTENANCE CHARGE
10 AND RELATED CHARGES

11 As noted above, the Recommendation specifically concluded as a matter of law that
12 AWC followed the Tariff with respect to the first maintenance charge. (Conclusion of Law No.
13 2) Since AWC applied the Tariff in the same manner in billing for the second maintenance
14 charge in September 2002 (and in both instances, credited SLV's bill for parts which could be
15 reused, see Findings of Fact Nos. 12 and 18) the ALJ had to disregard the admittedly lawful
16 provisions of the Tariff to find for SLV. The ALJ, relying on no evidence in the record,
17 incorrectly concluded that AWC did not act reasonably because it failed to install a surge
18 suppression system on the SLV meter. (Conclusion of Law No. 2)

19 First, as the Recommendation itself notes, under the Commission-approved Tariff the
20 customer is responsible for maintenance of the facilities used to serve the customer. (Findings of
21 Fact Nos. 4 and 5) The Recommendation also notes that the Tariff, with respect to repair and
22 replacement of a meter, is different from AWC's general service tariffs. (Finding of Fact No. 37)
23 But that is no accident; it is exactly what the Commission intended in its Decision that approved
24 the second revision of the Tariff, when it found that:

25 ["(t) he Tariff is designed to pass through to the customer all of the costs involved
26 in providing non-potable Central Arizona Project ("CAP") water service plus
27 amounts for administration. The Tariff places the applicable costs of service on
28 the appropriate customers while encouraging the conservation of groundwater." (Decision No. 61579, Finding of Fact No. 2)] (Emphasis added)

1 The Recommendation, however, ignores that Commission directive, and shifts the cost
2 burden to customers other than SLV because "...we believe that SLV should not be liable for the
3 maintenance fee incurred after the second electrical surge as a matter of equity...". (Finding of
4 Fact No. 39) The law, i.e., the Tariff was disregarded because the ALJ apparently believed it
5 was unfair. This is fundamentally unlawful, because, once a utility's tariff is filed and approved,
6 it has the force and effect of law. General Telephone Co. of the Northwest v. Bothell, 105 Wash.
7 2d 579, 716 P. 2d 879 (1986).

8 Second, if allowed to stand, the effect of the Recommendation would be to allow
9 Commission directives to be cast aside, and allow an ALJ to, in effect, amend a tariff that the
10 Commission already approved on three occasions (Finding of Fact No. 3) if the ALJ believes
11 there is a need to dispense "equity". Besides being unlawful and beyond the scope of the
12 evidentiary record in this case, this policy would, of course, be chaotic for the Commission and
13 the utilities it regulates.

14 The Recommendation must be revised to dismiss the Complaint as it relates to the second
15 maintenance charge, and related late fees and accrued taxes.

16 III.

17 UNDER THE TARIFF, INSTALLATION OF A SURGE SUPPRESSION SYSTEM IS THE
18 RESPONSIBILITY OF THE CUSTOMER

19 Next, going beyond the Complaint to award relief that SLV did not even request, the
20 Recommendation would require AWC, at its expense, to install surge suppression systems on all
21 of the electronic meters used to provide CAP water under Tariff No. NP-260.

22 A basic truth bears repeating - under the Tariff, the Commission approved and set in
23 place a clearly articulated cost recovery method that "...places the applicable costs of service on
24 the appropriate customers." (Finding of Fact No. 3) On the other hand the Recommendation
25 would arbitrarily shift those costs to AWC's other customers by having AWC pay the cost of
26 installing surge suppression on each CAP meter used for service under the Tariff.

27 There was no evidence in this proceeding that SLV cannot install surge suppression, or
28 that it has been prevented from doing so (Finding of Fact No. 22 makes it clear that SLV's

1 principals have inquired about installing surge protection themselves; AWC authorization has
2 not been requested or refused); SLV has simply sat on its hands and done nothing. One of SLV's
3 principals admitted that it would be appropriate for the SLV partners to install surge suppression
4 equipment (Tr., P. 39, l. 1-7). The Recommendation did not find that AWC has violated the
5 Tariff by not installing surge suppression systems. Indeed, it could not, based on the evidence
6 and the specific findings in the ALJ's Recommendation. Recognizing this Complaint proceeding
7 is not the proper place to consider an amendment to the Tariff (and the record certainly does not
8 support an amendment), the ALJ directs the Staff to "review AWC's CAP Tariff in AWC's
9 pending rate proceeding to see if changes or revisions are required." In so doing, the ALJ
10 recognizes that the provisions of the Tariff remain in full force and effect until or unless the
11 Commission finds sufficient reason to change the Tariff, if ever.

12 Accordingly, there is no basis for an ad hoc amendment to the Tariff excusing the
13 Customer's obligation for the second maintenance charge or requiring the Company to install the
14 surge suppression at its own expense while at the same time upholding the very same tariff
15 obligation as to the first maintenance charge. The requirement for installing surge suppression
16 systems must be removed from the Recommendation.

17 CONCLUSIONS

18 Findings of Fact No. 38 should be revised to remove the language requiring a credit of
19 the late charges and related taxes on the first maintenance charge; Finding of Fact No. 39 should
20 be revised to read as follows:

21 "SLV is liable for the maintenance charge under the terms of AWC's Tariff for the
22 maintenance charge due to the second electrical storm described hereinabove, and SLV is also
23 responsible for accrued late charges and related taxes" as provided in AWC's Tariff.

24 Conclusions of Law Nos. 3 (crediting the late charges) and 4 (relating to the Second
25 maintenance charge) should be similarly revised, and Conclusion of Law No. 5 (concerning
26 surge suppression installation) should be removed. Appropriate corresponding changes should
27 also be made to the first three ordering paragraphs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESPECTFULLY SUBMITTED this 6th day of March, 2003.

ARIZONA WATER COMPANY

By: Robert W. Geake
Robert W. Geake
Vice President and General Counsel
ARIZONA WATER COMPANY
Post Office Box 29006
Phoenix, Arizona 85038-9006

1 Original and thirteen (13) copies of the foregoing filed this 6th day of March, 2003 with:

2 Docket Control Division
3 Arizona Corporation Commission
4 1200 West Washington Street
5 Phoenix, Arizona 85007

6 A copy of the foregoing was mailed this 6th day of March, 2003 to:

7 The Honorable Marc E. Stern
8 Administrative Law Judge
9 Arizona Corporation Commission
10 1200 West Washington Street
11 Phoenix, Arizona 85007

12 Christopher Kempley, Chief Counsel
13 Legal Division
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, Arizona 85007

17 Ernest G. Johnson
18 Director, Utilities Division
19 Arizona Corporation Commission
20 1200 West Washington Street
21 Phoenix, Arizona 85007

22 Ronald Saxon
23 SLV Properties, L.L.C.
24 8070 E. Morgan Trail, Suite 130
25 Scottsdale, Arizona 85258

26 Kenneth J. Vegors
27 SLV Properties, L.L.C.
28 8070 E. Morgan Trail, Suite 130
Scottsdale, Arizona 85258

By: R. W. Yee

ATTACHMENT "A"

COMMISSIONERS
MARC SPITZER - Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON



BRIAN C. MCNEIL
Executive Secretary

ARIZONA CORPORATION COMMISSION

DATE: February 25, 2003
DOCKET NO: W-01445A-02-0198
TO ALL PARTIES:

RECEIVED

FEB 26 2003

ARIZONA WATER COMPANY
PHOENIX - LEGAL

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

SLV PROPERTIES, L.L.C. v. ARIZONA WATER COMPANY
(COMPLAINT)


Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 6, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 11 and 12, 2003

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.


BRIAN C. MCNEIL
EXECUTIVE SECRETARY

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347
www.cc.state.az.us

This document is available in alternative formats by contacting Shelly Hood, ADA Coordinator, voice phone number 602-542-3931, E-mail SHood@cc.state.az.us

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

RECEIVED

FEB 26 2003

ARIZONA WATER COMPANY
PHOENIX - LEGAL

IN THE MATTER OF:

SLV PROPERTIES, L.L.C.,

Complainant,

vs.

ARIZONA WATER COMPANY,

Respondent.

DOCKET NO. W-01445A-02-0198

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING:

December 3, 2002

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

APPEARANCES:

Kenneth J. Vegors and Ronald Saxon, principals,
on behalf of SLV Properties, LLC; and

Robert W. Geake, Vice President and General
Counsel, Arizona Water Company.

BY THE COMMISSION:

On March 18, 2002, SLV Properties, L.L.C. ("SLV" or "Complainant") filed with the Arizona Corporation Commission ("Commission") a Complaint against Arizona Water Company ("AWC" or "Respondent") alleging that AWC was negligent in providing service to the Complainant.

On March 28, 2002, Respondent filed an Answer to the allegations of the Complaint.

On April 3, 2002, by Procedural Order, a pre-hearing conference was scheduled for April 18, 2002.

On April 5, 2002, AWC filed a Motion to Continue the pre-hearing. Complainant did not object to this request.

1 On April 11, 2002, by Procedural Order, the pre-hearing was continued to May 2, 2002.

2 On May 2, 2002, a pre-hearing conference was held with representatives of SLV and the
3 Respondent present. Issues involved in the proceeding were discussed and the parties agreed to
4 attempt to resolve the Complaint. They further agreed to a teleconference on June 4, 2002, to review
5 the Complaint's status.

6 On June 4, 2002, the parties were unable to resolve the Complaint. Prior to a hearing being
7 set, SLV requested time to consult with counsel and agreed to notify the Commission within 30 days
8 as to when it could go forward with its Complaint.

9 On June 5, 2002, by Procedural Order, SLV's request for a 30 day continuance was granted
10 and SLV was to contact the presiding Administrative Law Judge to schedule a hearing.

11 On July 8, 2002, SLV filed a request to schedule a hearing to accommodate the business
12 travel schedule of Mr. Saxon, a principal of SLV. It was subsequently indicated that Mr. Saxon was
13 expected to be in Arizona after November 1, 2002.

14 On July 17, 2002, by Procedural Order, the hearing was scheduled on November 13, 2002.

15 On November 12, 2002, SLV requested a brief continuance telephonically due to a scheduled
16 surgery on a family member of a principal in SLV. Respondent did not object to this request.

17 On November 14, 2002, by Procedural Order, the Commission continued the proceeding from
18 November 13, 2002 until December 3, 2002.

19 On November 18, 2002, SLV filed an amendment to its Complaint.

20 On December 3, 2002, a full public hearing was held before a duly authorized Administrative
21 Law Judge of the Commission at its offices in Phoenix, Arizona. Two principals in SLV appeared on
22 its behalf. AWC was represented by counsel. At the conclusion of the hearing, the matter was taken
23 under advisement pending submission of a Recommended Opinion and Order to the Commission.

24 * * * * *

25 Having considered the entire record herein and being fully advised in the premises, the
26 Commission finds, concludes, and orders that:

27 **FINDINGS OF FACT**

28 1. Pursuant to authority granted by the Commission, AWC provides public water utility

1 service in the vicinity of Apache Junction, Pinal County, Arizona.

2 2. On March 18, 2002, SLV dba MountainBrook Golf Club, L.L.C. ("MountainBrook"),
3 a wholly owned subsidiary of SLV, filed a Complaint against AWC alleging it was attempting to
4 collect the replacement cost of an electronic water meter used to supply non-potable Central Arizona
5 Project ("CAP") water to MountainBrook because AWC had failed to maintain insurance on utility
6 property, which, when damaged, required Complainants to pay for its maintenance pursuant to
7 AWC's NP-260 Tariff ("Tariff").

8 3. MountainBrook is provided with non-potable CAP water for irrigation purposes
9 pursuant to Respondent's Tariff, which was originally approved by the Commission in Decision No.
10 58593 (April 6, 1994) and subsequently revised by Decision No. 58949 (January 12, 1995) and
11 Decision No. 61579 (March 15, 1999). The Commission, in Decision No. 61579, found that "[t]he
12 Tariff is designed to pass through to the customer all of the costs (emphasis added) involved in
13 providing non-potable Central Arizona Project ("CAP") water service plus amounts for
14 administration. The Tariff places the applicable costs of service on the appropriate customers while
15 encouraging the conservation of ground water."

16 4. The Tariff identifies a number of components which comprise the respective
17 customer's monthly bill and includes a power, maintenance and depreciation charge based on the
18 specific requirements of each customer.

19 5. With respect to the maintenance component, the Tariff states as follows:

20 B. The maintenance component will be the actual costs of
21 maintaining the facilities required to serve the customer,
22 plus a ten percent (10%) charge to provide for overhead
23 and margin. If multiple customers are being served by
common facilities, the maintenance component will be
prorated based on each customer's CAP demand.

24 6. Under the terms of the Tariff, the customer is required to contribute the funds required
25 to install all of the facilities needed to provide CAP water and said facilities are then owned by
26 Respondent.

27 7. SLV was not an original party to the agreement between Respondent and
28 MountainBrook to provide the golf course with water. The original agreement had been between

1 UDC Homes ("UDC") and AWC, but after UDC went into bankruptcy, its assets were purchased by
2 a third party which then sold the golf course to SLV.

3 8. Due to the circumstances of the bankruptcy proceeding, at the time SLV acquired
4 MountainBrook, its principals were unaware of the Tariff requirement to transfer ownership of the
5 CAP facilities from MountainBrook to AWC and the requirement for Complainant to pay
6 maintenance charges for the transferred facilities.

7 9. SLV's initial Complaint grew out of an incident involving a lightning strike during an
8 electrical storm, which created a power surge in mid-July, 2001. The power surge rendered
9 inoperable AWC's electronic meter which measures the flow of CAP water through a six inch main
10 that brings irrigation water to MountainBrook.

11 10. On or about July 18, 2001, AWC hired Pump, Valve & Control Service, Inc. ("PVC")
12 to repair MountainBrook's electronic water meter.

13 11. PVC charged Respondent \$3,631.98 to repair MountainBrook's electronic water
14 meter. PVC's bill to AWC stated that MountainBrook's power supply and front panel display had
15 been burned out by the electrical storm. PVC's invoice also stated that the power supply and front
16 panel display were replaced "as Required."

17 12. AWC deducted \$1,250 from what it had been charged by PVC because it salvaged a
18 number of parts for use in the future, billing MountainBrook the remaining \$2,381.98 plus 10%
19 overhead (\$238.20) pursuant to the terms of its Tariff for a total of \$2,620.18 for the maintenance
20 performed on AWC's meter.

21 13. A principal in SLV, Mr. Kenneth Vegors, testified that since Complainant has been
22 required to transfer ownership of the electronic water meter to AWC after SLV acquired
23 MountainBrook, it was assumed that AWC would be responsible for the equipment since SLV no
24 longer had an insurable interest in the property.

25 14. Until the damage claim arising from the electrical surge in July 2001, SLV's
26 principals remained unaware of their obligation under the Tariff to maintain Respondent's property
27 utilized in the provision of CAP water to MountainBrook.

28 15. In addition to the electronic flow meter utilized for CAP water used for irrigating

1 MountainBrook, AWC also provides potable water to the facility for drinking and other purposes
2 through a separate meter.

3 16. Since the initial damage and repairs to AWC's meter in July 2001, the bill to SLV for
4 maintenance has gone unpaid and as of November 9, 2002, the balance owed for this service
5 including late charges and taxes has increased to \$3,378.93.

6 17. Subsequent to the initial incident complained of herein, on or about September 3,
7 2002, a second electrical storm took place and further damage was done to Respondent's electronic
8 water meter which provides CAP water to MountainBrook, resulting in an additional bill being issued
9 to Complainant for maintenance performed on AWC's property.

10 18. As a result of the second incident, Respondent billed the Complainant \$1,046.47 for
11 maintenance after repairs were again made by PVC for what appears to be similar damage. This
12 maintenance fee was somewhat lessened by AWC providing PVC with some of the salvaged parts
13 from the earlier incident to repair its meter following the second electrical storm.

14 19. On November 18, 2002, SVC amended its Complaint to include the charges for the
15 maintenance on AWC's meter arising from the second electrical storm contending that it goes beyond
16 maintenance and is more related to the replacement of AWC's meter¹.

17 20. SLV's principal argued that "replacement" of AWC's facilities is not within the scope
18 of maintenance as stated in the Tariff.

19 21. Subsequent to the second electrical damage incident, SLV's principals investigated
20 whether the installation of a surge suppression system could prevent incidents such as described
21 hereinabove to Respondent's electronic water meter.

22 22. According to SLV's principal, Mr. Vegors, PVC indicated that a surge suppression
23 system could be installed for \$518 to protect the meter, but PVC would first have to secure AWC's
24 authorization to perform the work to insure payment.

25 23. There is no evidence that, prior to SLV's investigation of this matter with respect to
26 the surge suppression system, AWC investigated whether it could better insulate its customer from

27 ¹ It is interesting to note that, under the Tariff, SLV is also paying a monthly depreciation charge based on the
28 original cost of the meter which, according to SLV's bills, is \$2,446, which sum is substantially less than the total of the
two maintenance charges.

1 unexpected maintenance charges due to electrical surges damaging the water meter.

2 24. In closing, Complainant further complained that AWC had been holding a \$10,400
3 deposit since 1997 when it took over the operations of MountainBrook and believes that the deposit
4 should be refunded. However, this issue had not been raised previously in this proceeding and AWC
5 was not prepared to respond to these new allegations.

6 25. While SLV has not paid for the repairs following the first electrical strike, which sum
7 with late charges and sales tax added to it now totals \$3,378.93, SLV mistakenly included a payment
8 for \$994.42² for the maintenance charge due to the second electrical storm in its November, 2002
9 payment to AWC for water service and is requesting a refund of the sum paid for this maintenance.

10 26. Based on the record, at least in the first instance, Complainant did not meet its burden
11 of proof that it should not be held accountable for the maintenance of its electronic water meter under
12 the terms of the Tariff.

13 27. SLV argues that the obligation for installing a surge suppression system to protect
14 AWC's electronic water meter should be AWC's since the Complainant does not own the meter and
15 does not have any control over how it is maintained by AWC.

16 28. According to AWC's vice-president of operations, Mr. William Garfield, AWC's
17 electronic water meter, which measures CAP water distribution to MountainBrook, is one of five
18 electronic meters which measure CAP water provided by AWC's Apache Junction system to three
19 customers that purchase CAP water from AWC. These meters are part of a distribution system which
20 was constructed and owned by Mr. Lyle Anderson for five golf courses in the area, MountainBrook,
21 the Gold Canyon Resort Golf Course and the Superstition Mountain Courses which are owned by Mr.
22 Anderson.

23 29. The six-inch electronic water meter used to measure CAP water delivered to
24 MountainBrook was installed by either UDC or its contractor, and was to be treated as a contribution
25 by AWC. After SLV acquired MountainBrook, AWC required SLV to convey the meter facilities to
26 AWC as required by the Tariff.

27
28 ² This sum was apparently due to a revision by AWC of the original bill for maintenance sent to SLV in
September 2002 for \$1,046.47

1 30. Referring to photographic exhibits, Mr. Garfield testified that MountainBrook's
2 electronic water meter is composed of multiple components consisting of cables, enclosures, power
3 sources, a ductile spool and sensors attached to the six-inch water main which provides CAP water to
4 MountainBrook. The sensors send a signal into the water flowing through the main to determine its
5 velocity and thus the volume of water being used. The sensors are connected by conduits which are
6 connected to a junction box from which another cable exits the meter vault and goes to the actual
7 meter display which is located above ground.

8 31. Mr. Garfield further testified that the purpose of the NP-260 Tariff was to provide
9 AWC with a method to recover the costs that it incurred for CAP water together with a small
10 administrative fee and did not constitute income as such to the Company.

11 32. Mr. Garfield acknowledged that one way to mitigate the effects of power surges due to
12 electrical storms is by means of "a surge protector, not unlike what one would have on a personal
13 computer, a PC that most people have plugged into their homes."

14 33. Mr. Garfield pointed out that although the customer provides the power to operate
15 AWC's electronic water meter used to measure CAP water, AWC hires a contractor, PVC, to
16 perform maintenance on AWC's electronic meters.

17 34. AWC's representative further pointed out that the electronic water meter at Gold
18 Canyon was also damaged similarly at the time of the first electrical storm, but Gold Canyon did not
19 dispute the same maintenance charge as disputed by SLV.

20 35. AWC argues that if AWC approves a request for surge protection, it is the customer's
21 responsibility to pay for the installation of a surge protection system to protect AWC's electronic
22 water meter.

23 36. Mr. Garfield indicated that one reason AWC did not have surge suppression
24 equipment to protect its electronic water meter serving MountainBrook was because AWC had not
25 been involved in the original installation by UDC. However, he indicated that AWC installs surge
26 protection equipment on other sensitive equipment that it has in the field.

27 37. Unlike the CAP water Tariff, under AWC's general service tariff, the expense of
28 repair and/or replacement of a water meter owned by AWC is AWC's responsibility unless there is

1 negligence on the part of the customer.

2 38. Under the circumstances, with respect to the maintenance charge due to the first
3 electrical storm described hereinabove, we believe that the Complainant is liable for the maintenance
4 charge under the terms of AWC's Tariff. However, we also believe that since SLV had a Complaint
5 pending before the Commission, all accrued charges for late charges and related taxes should be
6 credited and only the initial maintenance charge as prescribed by the Tariff is due.

7 39. With respect to the maintenance charge arising from the second electrical storm
8 described hereinabove, we believe that AWC failed to act reasonably and prudently in the operation
9 of the utility by failing to install a surge suppression system to prevent further damage to its
10 electronic water meter that is exclusively within its control and used to serve MountainBrook. Unless
11 AWC takes action, SLV is subject to open ended claims for maintenance charges without the ability
12 to minimize its expense. Under the terms of the Tariff, the facilities used to provide CAP water to
13 SLV are owned by AWC and therefore it alone can determine the operational aspects for the facilities
14 and mitigate damages to its system. Therefore, we believe that SLV should not be liable for the
15 maintenance fee incurred after the second electrical surge as a matter of equity and should have
16 credited to its account any amount paid previously for a maintenance charge arising from the second
17 incident. Lastly, AWC should act prudently to protect utility property and install surge suppression
18 systems on all of its CAP water facilities to prevent further problems such as this from developing in
19 the future to avoid unforeseen expenses which are merely passed on to the CAP customers.

20 40. With respect to the issue of SLV's deposit, we shall not address it in this proceeding
21 since it was raised without notice to the Respondent previously, but we shall direct Staff to look into
22 this matter and, if appropriate, take whatever steps necessary to insure that AWC refunds SLV's
23 deposit when appropriate. Lastly, we shall direct that Staff review AWC's CAP Tariff in AWC's
24 pending rate proceeding to see if any changes or revisions are required.

25 CONCLUSIONS OF LAW

26 1. AWC is a public service corporation within the meaning of Article XV of the Arizona
27 Constitution and A.R.S. §§ 40-246 and 40-321.

28 2. The Commission has jurisdiction over AWC and the Complaint herein.

3. With respect to SLV's first maintenance charge at issue herein, AWC properly charged SLV the maintenance fee allowable under the Tariff and that portion of the Complaint should be dismissed. However, SLV should be credited for any late charges and related taxes accruing while the Complaint was pending.

4. With respect to the second maintenance charge at issue, the relief required by Complainant should be granted and the maintenance charge paid previously by SLV should be credited to SLV's account.

8 5. AWC should install, at its expense, surge suppression systems on all of its electronic
9 systems used to provide CAP water under the Tariff since it controls and owns the facilities.

10 6. Staff should examine whether the issue raised herein with respect to SLV's deposit is
11 proper under the circumstances and, if appropriate, insure that AWC refunds SLV's deposit when
12 appropriate.

13 7. Staff should review AWC's CAP Tariff in AWC's pending rate proceeding to see if
14 changes or revisions are required.

ORDER

IT IS THEREFORE ORDERED that the Complaint of SLV Properties, L.L.C. with respect to that portion of its complaint concerning the first maintenance charge due to a July 2001 electrical storm be dismissed except that accrued late charges and related taxes shall be credited; and that with respect to the second maintenance charge due to a September 2002 electrical storm, Arizona Water Company shall apply as a credit any funds previously paid by SLV Properties, L.L.C. for this charge to its account and Arizona Water Company shall be required to install a surge suppression system for its electronic water meter utilized to provide service to the MountainBrook Golf Club.

23 IT IS FURTHER ORDERED that Arizona Water Company shall install, within 90 days of the
24 effective date of this Decision, at its expense, surge suppression systems on all of its electronic
25 systems used to provide CAP water service under its NP-260 Tariff.

26 IT IS FURTHER ORDERED that Arizona Water Company shall file certification with the
27 Director of the Commission's Utilities Division within 30 days of the completion of the installation
28 of the surge suppression systems.

1 IT IS FURTHER ORDERED that the Commission's Utilities Division should examine
2 whether the issue raised with respect to SLV Properties, L.L.C.'s deposit is proper under the
3 circumstances and, if appropriate, insure that Arizona Water Company refunds SLV Properties,
4 L.L.C.'s deposit when appropriate.

5 IT IS FURTHER ORDERED that the Commission's Utilities Division shall review the NP-
6 260 Tariff of Arizona Water Company during the pending general rate application for its Apache
7 Junction system and recommend changes or revisions as required.

8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

10
11
12 CHAIRMAN COMMISSIONER COMMISSIONER

13
14 COMMISSIONER COMMISSIONER

15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Secretary of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this ____ day of _____, 2003.

20 BRIAN C. McNEIL
EXECUTIVE SECRETARY

21 DISSENT _____

22 DISSENT _____

23 MES:mlj
24
25
26
27
28

1 SERVICE LIST FOR: SLV PROPERTIES, L.L.C. v. ARIZONA WATER
2 COMPANY
3 DOCKET NO. W-01445A-02-0198
4 Robert W. Geake
5 ARIZONA WATER COMPANY
6 P.O. Box 29006
7 Phoenix, Arizona 85038-9006
8 Kenneth J. Vegors
9 Ronald Saxon
10 SLV PROPERTIES, LLC
11 14646 North Kierland Blvd., Ste. 230
12 Scottsdale, AZ 85254
13 Christopher Kempley, Chief Counsel
14 Legal Division
15 1200 W. Washington Street
16 Phoenix, AZ 85007
17 Ernest G. Johnson, Director
18 Utilities Division
19 1200 W. Washington Street
20 Phoenix, AZ 85007
21
22
23
24
25
26
27
28

WATER RATES

ARIZONA WATER COMPANY

Phoenix, Arizona

Filed by: James R. Livingston

Title: President

Date of Original Filing: March 7, 1994

System: APACHE JUNCTION, CASA GRANDE,
COOLIDGE, WHITE TANK

A.C.C. No. 440

Cancelling A.C.C. No. (not applicable)

Tariff or Schedule No. NP-260

Filed: February 2, 1999

Effective: March 15, 1999

ORIGINAL**NON-POTABLE CENTRAL ARIZONA PROJECT WATER****AVAILABILITY:**

In the Company's Apache Junction, Casa Grande, Coolidge and White Tank water systems, where and when Central Arizona Project ("CAP") water is available.

SUITABILITY:

It is the customer's responsibility to determine the initial and continuing suitability of the non-potable CAP water furnished under this tariff for any intended uses. The Company does not treat, test or monitor non-potable CAP water and furnishes it to customers strictly on an "as received" basis from the Central Arizona Water Conservation District ("CAWCD"). The customer agrees to accept non-potable CAP water "as received." Compliance with any requirement of the Arizona Department of Environmental Quality, or any other agency having jurisdiction, concerning the use or quality of non-potable CAP water shall be the sole responsibility of the customer. The Company will not be liable for, and the customer will hold harmless, indemnify and defend the Company against, any injuries or damages arising from its service of non-potable CAP water.

FACILITIES AND DEMAND:

When applying for non-potable CAP water service, the customer shall specify the maximum annual quantity of CAP water in acre feet (AF) that it intends to use under this tariff schedule and pursuant to a Non-Potable Water Facilities Contribution Agreement. This quantity of water will be used to determine the facilities required to serve the customer and will be the customer's maximum demand for non-potable CAP water ("CAP Demand") during any calendar year. The customer will be responsible for both the deferred (including holding costs) and the current annual CAWCD M&I Water Service Capital Charges on the CAP Demand and on any water use in excess of the CAP Demand.

The customer will contribute the funds required to install all facilities needed to provide CAP water. Such facilities will be owned by the Company.

The Deferred CAP Demand Charge includes the deferred annual CAWCD M&I Water Service Capital Charges and associated holding costs for the customer's CAP Demand. The Deferred CAP Demand Charge is payable prior to the start of service or within fifteen (15) days of any approved increase in CAP Demand. The Deferred CAP Demand Charge will be payable only on any future increase in CAP Demand for those customers receiving service under this tariff as of the effective date. The Deferred CAP Demand Charge is not refundable if the customer's CAP Demand is later reduced.

APPROVED FOR FILING

DECISION #: 61579

Effective 3/15/99
Revised 1/18/95
Revised 1/15/99

MONTHLY BILL:**ORIGINAL**

The monthly billing will consist of the following components:

1. A monthly CAP Demand charge equal to 1/12th of the customer's CAP Demand in AF times the applicable CAWCD M&I Water Service Capital Charge per AF plus four percent (4%) of such costs to cover the Company's administrative and handling costs. Should the customer's actual water use exceed the customer's CAP Demand, the customer will be billed an additional demand charge, based on the applicable CAWCD M&I Water Service Capital Charge, on the excess water use, plus a four percent (4%) administrative and handling fee.

2. A meter charge based on the applicable monthly minimum charge by meter size as set forth in each system's General Service tariff schedule. This meter charge shall not include any water.

3. A commodity charge designed to pass on all costs of non-potable CAP water, except the monthly CAP Demand charge, as billed to the Company during the previous month by the CAWCD or any other authorized governmental agency, plus one percent (1%) of such costs to cover the Company's administrative and handling costs.

4. A power, maintenance and depreciation charge based on the specific requirements of each customer.

A. The power component will be the direct and separately metered cost of the power billed to the Company during the previous month for CAP water delivered to the customer, plus one percent (1%) of the power cost to cover the Company's administrative and handling costs. If multiple customers are being served by common facilities, the power component will be prorated based on CAP water actually used during the month by each customer.

B. The maintenance component will be the actual costs of maintaining the facilities required to serve the customer, plus a ten percent (10%) charge to provide for overhead and margin. If multiple customers are being served by common facilities, the maintenance component will be prorated based on each customer's CAP Demand.

C. The depreciation component will be 1/12th of the product of the Company's book depreciation rate, as authorized by the Arizona Corporation Commission, times the original cost of the plant facilities serving the customer. If multiple customers are being served by common facilities, the depreciation component will be prorated based on each customer's CAP Demand.

Late Charge: Any payment not received within fifteen (15) days from the postmark date of the bill will be delinquent and subject to a late charge of one and one-half percent (1½%) per month.

Adjustment: An adjustment for state and local taxes, which will be the applicable proportionate part of any taxes or governmental impositions which are, or in the future may be, assessed on the basis of the gross revenues of the Company and/or the price or revenue from the water or service sold and/or the volume of water pumped or purchased for sale and/or sold hereunder. In the event of any increase or decrease in taxes or other governmental impositions, rates shall be adjusted to reflect such tax increase or decrease.

TERMS AND CONDITIONS:

Subject to the Company's Tariff Schedule TC-243.

APPROVED FOR FILING**DECISION #:** 61579

ATTACHMENT "C"

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

NOV 16 2002

ARIZONA WATER COMPANY
PHOENIX - LEGAL

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

SLV PROPERTIES, L.L.C.,

COMPLAINANT

vs.

ARIZONA WATER COMPANY,

RESPONDENT.

DOCKET NO. W-01445A-02-0198

PROCEDURAL ORDER

BY THE COMMISSION:

On March 18, 2002, SLV Properties, L.L.C. ("SLV" or "Complainant") filed with the Arizona Corporation Commission ("Commission") a Complaint against Arizona Water Company ("AWC" or "Respondent") alleging that AWC was in negligent in providing service to the Complainant.

On March 28, 2002, Respondent filed an Answer to the allegations of the Complaint.

On April 3, 2001, by Procedural Order, a pre-hearing conference was scheduled for April 18, 2002.

On April 5, 2002, AWC filed a Motion to Continue the pre-hearing. Complainant has no objection to this request.

On April 11, 2002, by Procedural Order, the pre-hearing was continued to May 2, 2002.

On May 2, 2002, a pre-hearing conference was held with representatives of SLV and the Respondent present. Issues involved in the proceeding were discussed and the parties agreed to attempt to resolve the Complaint. They further agreed to a teleconference on June 4, 2002, to review the Complaint's status.

On June 4, 2002, the parties were unable to resolve the Complaint. Prior to a hearing being set, SLV requested time to consult with counsel and agreed to notify the Commission within 30 days as to when it could go forward with its Complaint.

On June 5, 2002, by Procedural Order, SLV's request for a 30 day continuance was granted

1 and SLV was to contact the presiding Administrative Law Judge to schedule a hearing.

2 On July 8, 2002, SLV filed a request to schedule a hearing to accommodate the business
3 travel schedule of Mr. Saxon, a principal of SLV. It was subsequently indicated that Mr. Saxon was
4 expected to be in Arizona after November 1, 2002.

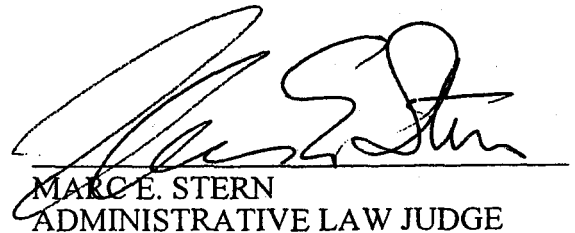
5 On July 17, 2002, by Procedural Order, the hearing was scheduled on November 13, 2002.

6 On November 12, 2002, SLV requested a brief continuance telephonically due to a scheduled
7 surgery on a family member of a principal in SLV. Respondent did not object to this request.

8 Accordingly, the hearing should be continued.

9 IT IS THEREFORE ORDERED that the hearing scheduled on November 13, 2002, shall be
10 continued to December 3, 2002, at 9:30 a.m., at the Commission's offices, 1200 West Washington
11 Street, Phoenix, Arizona.

12 DATED this 14th day of November, 2002.


MARCE E. STERN
ADMINISTRATIVE LAW JUDGE

16 Copies of the foregoing mailed/delivered
17 this 14th day of November, 2002.


18 Robert W. Geake
19 ARIZONA WATER COMPANY
20 P.O. Box 29006
Phoenix, Arizona 85038-9006

21 Kenneth J. Vegors
22 Ronald Saxon
23 SLV PROPERTIES, LLC
14646 North Kierland Blvd., Ste. 230
Scottsdale, AZ 85254

24 Christopher Kempley, Chief Counsel
25 Legal Division
1200 W. Washington Street
Phoenix, AZ 85007

26 Ernest G. Johnson, Director
27 Utilities Division
28 1200 W. Washington Street
Phoenix, AZ 85007

1 ARIZONA REPORTING SERVICE, INC.
2 2627 North Third Street, Ste. Three
3 Phoenix, AZ 85004-1103

4 By: 
5 Molly Johnson
6 Secretary to Marc E. Stern
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28